

August 25, 2000

VIA EMAIL AND REGULAR MAIL

Ms. Margaret Borushko
c/o Air Docket (6102)
US Environmental Protection Agency
Room M-1500
401 M Street, S.W.
Washington, DC 20460

Subject: Control of Air Pollution From New Motor Vehicles: Proposed Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements, 65 Fed. Reg. 35430 (June 2, 2000) (Docket #A-99-06)

Ms. Borushko:

The Office of Advocacy of the U.S. Small Business Administration is submitting comments on EPA's Notice of Proposed Rulemaking on heavy-duty engines and sulfur in highway diesel fuel and requests that this letter be placed in the public record.

The Office of Advocacy has been working with EPA since before the Small Business Advocacy Review Panel was convened to discuss this rule. During the panel process, we had a particular concern about the potential impact of this rule on small refiners, considering that some refiners would have to obtain financing for the Tier 2 gasoline sulfur program, issued earlier, in virtually the same time frame as this proposal. Lacking sufficient information on the environmental impacts, however, we agreed, as a member of the panel, to the recommendation that EPA seek comment on alternatives that would preserve small refiners while concurrently protecting the environment.

EPA adopted virtually all of the recommendations in the panel report when it published its proposal for public comment. One alternative in particular that we wish to underscore is: What is lost in terms of environmental concerns if small refiners are given an additional 2-4 year delay to comply with the gasoline sulfur standard if they commit to desulfurizing highway diesel fuel in the same timeframe as the diesel proposal? This is an appropriate question that deserves EPA analysis of the air quality impacts that either supports the alternative or justifies its rejection, as required by the Regulatory Flexibility Act.

Small refiners raised this alternative during the panel's discussions as one of five options that, taken together, could potentially provide the industry with some flexibility. Given that small refiners represent only 4 percent of the market for highway diesel fuel and, to our knowledge, contribute little, if anything, to nonattainment areas for PM and ozone, we do not see what environmental protection is lost with delayed implementation -- not a complete exemption -- for small refiners.

We are concerned that, without any flexibility, this proposal could significantly reduce competition in the highway diesel fuel market. While we do not have independent research on the anti-competitive effects of this rule, we recently became aware of a study which indicates that the long-run direct price elasticity of demand for highway diesel fuel could be around -0.5 .¹ If so, average retail prices could increase almost 10 percent, if all the small refiners representing 4 percent of the market exit as a result of this rule.² This would indicate that small truckers could face significantly higher prices at the pump. It would also indicate that the rule's impact on competition would be significant and should be balanced with environmental savings achievable

¹ The direct price elasticity of demand measures the relationship between the percentage change in quantity demanded and the percentage change in price. The measures for truck, bus, and rail diesel fuel are -0.54 , -0.48 , and -0.37 , respectively. These results are reported in Carol Dahl's "A Survey of Energy Demand Elasticities in Support of the Development of the NEMS," prepared for the U.S. Department of Energy under contract De-AP01-93EI23499 (October 19, 1993), pp. 122-123. It is also important to note, based on the study's findings, the average retail price increase could be significantly higher in the short run than the long run, probably because consumers have fewer substitution possibilities in the short run.

² With an output decline of 4 percent and an elasticity coefficient of -0.5 , the anticipated price increase would be 8 percent.

now versus later. This provides somewhat compelling evidence that EPA should provide flexibility for small refiners.

Moreover, we understand that small refiners recently offered to provide data on the rule's anti-competitive effects, data that EPA did not have prior to publication of its proposal for public comment. The data may indicate that, if faced with the proposal's 15-ppm sulfur limit, small refiners would probably shift their highway diesel fuel to off-road markets, rather than remain in the on-road market. A request to extend the comment period on the rule has been denied, but EPA has notified small refiners that it will accept comments provided to the Agency in a timely manner and will consider the information provided in its formulation of the final rule.³ The data and information received should be placed in the docket for all to examine. The Office of Advocacy looks forward to reviewing it in preparation for our evaluation of the final rule.

If you have any question, please feel free to contact my staff person working on these issues, Austin Perez, at 202-205-6936. We stand ready to assist EPA in developing alternatives that would protect the environment and preserve small businesses in the refining industry.

Sincerely,

Jere W. Glover
Chief Counsel for Advocacy

Austin Perez
Assistant Advocate

³ The EPA letter agreeing to receive additional data from the small refiners includes the statement that "[EPA's] analyses are based on the best information available and are quite robust." The new data the small refiners are offering to provide should augment significantly the data EPA has on hand.